IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.466 OF 2002

Sureshkumar @ Suresn @ Suran .. Appellant

-Vs-

State
rep. By the Inspector of Police(Crime)
P6 Peelamedu Police Station
Coimbatore
(Crime No.774/99) .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C. against the judgment made in S.C.No.84 of 2000 dated 4.12.2001 on the file of the learned Additional District Sessions Court, Fast Track Court No.1, Coimbatore.

!For Appellant : Mr.M.Damodharan

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused before the trial court, who stood charged, tried and found guilty under Sections 392 r/w 397 and 506(ii) I.P.C. and sentenced to undergo 7 years R.I. Under Section 397 I.P.C. and one year R.I. under Section 506(ii) I.P.C. has preferred this criminal appeal.

2. The short facts necessary for the disposal of the case can briefly be stated as follows:

a) On 24.7.1999 at about 6.00 p.m., P.W.1, milk vendor, after supplying of the milk to society, parked his M.O.2 cycle in front of a shop near Maharaja Bakery, Avinashi Road, Peelamedu, Coimbatore. At that time, the appellant/accused took M.O.2 cycle, which was objected to by P.W.1. The appellant/accused took M.O.1, knife and threatened P.W.1 that if he came nearby, he would stab him. P.Ws.2 and 3, who were present at that place and witnessed the said incident, were about to interfere and were also criminally intimidated with dire consequence by the appellant. The appellant took away M.O.2, cycle , from the said place.

b) P.W.1 rushed to P-6 Police Station at about 7.15 p.m. and gave a complaint under Ex.P.1 to P.W.5, Inspector of Police. On the strength of

which, P.W.5 registered a case in Crime No.774/99 under Sections 392 and 506(ii) I.P.C. The printed F.I.R under Ex.P.6 was sent to concerned Judicial Magistrate Court. P.W.5 took up investigation, proceeded to the site of occurrence and prepared Ex.P.7 Observation Mahazar in the presence of the witnesses and Ex.P.8, rough sketch. He examined the witnesses and recorded their statements. On 25.7.1999 at about 6.30 a.m., when the accused was arrested by the Investigating Officer, he volunteered to give a confessional statement, which was recorded in the presence of the witnessed, namely, P.W.4 and the other witness. Pursuant to the confessional statement, the accused/appellant took the Investigating Officer and the other witnesses and produced M.O.1 knife and M.O.2,cycle subject matter of theft. They were also recovered by the Investigating Officer in front of the said witnesses under a Mahazar. The accused was remanded to judicial custody and the properties so recovered were also entrusted to the court custody. On completion of investigation, a charge sheet has been filed by the Investigating Officer under Section 392 r/w 397 and 506(ii) r/w 75 I.P.C.

3. In order to prove the charges levelled against the accused, the prosecution has examined 5 witnesses and marked 8 exhibits and 2 M.Os. On completion of the evidence on the side of prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witness, which was flatly denied by the accused as false. No defence witnesses were examined. After consideration of the rival submissions made and scrutiny of the materials available, the trial court found the appellant/accused guilty under Sections 397 and 506(ii) I.P.C. and sentenced to imprisonment as stated above.

4. The learned counsel appearing for the appellant at the time of his argument made the following submissions for the consideration of this Court. According to the prosecution, the subject matter of robbery in the instant case was M.O.2, cycle. P.W.1 has given a complaint, which was marked as Ex.P.1, wherein he has stated that what was stolen was only cycle, but at the time of evidence, he has deposed that he parked his cycle along with milk can and the can was also stolen along with cycle. There were material contradictions in the evidence of witnesses, on whose evidence the prosecution relied on to bring home the guilt of the accused. M.O.1, knife was not identified by the witnesses. P.W.1 did not know the accused earlier. No identification parade was conducted in this case. The case was one foisted at the instance of P.W.1 due to prior enmity, which prevailed between the parties. Under the stated circumstances, the lower court, without proper appreciation of the evidence, has found the accused guilty. Hence, the accused is entitled to for acquittal in the hands of this Court.

5. Opposing all the contentions put forth by the learned counsel for the appellant, the learned Government Advocate would submit that the prosecution has proved its case beyond all reasonable doubt; that it has not only examined P.W.1, the owner of the property, namely, M.O.2 cycle, but identified the same at the time of trial; that the prosecution has also examined P.Ws.2 and 3, who were the eye witnesses to the occurrence and through whose evidence the prosecution has clearly proved the case; that the prosecution has also adduced proper evidence for the arrest, confessional statement and the recovery of M.Os.1 and 2 from the accused, which would clinchingly prove the case of prosecution; that under the stated circumstances, the minor discrepancies in the evidence of prosecution cannot

in any way affect or mitigate the vigour of the prosecution case, and hence, the judgment of the lower court has got to be sustained.

6. This Court paid its full attention on the submissions made and scrutiny of the materials available. The gist of the prosecution case was that on 24.07.1999 at about 6.00 p.m. P.W.1, the milk vendor, after supplying of milk to society, parked his cycle in front of a shop near Maharaja Bakery, Avinashi Road, Peelamedu, Coimbatore. At that time, when the accused was about to take his cycle, the same was objected to by P.W.1, naturally the owner of the cycle. The accused immediately took M.O.1, knife and threatened him with dire consequences and took away M.O.2 cycle from there. P.W.1 has given a complaint with the identity of the cycle. Apart from that he has also identified the same in court. The said M.O.2 cycle which belonged to P.W.1 was not a fact disputed by the accused, nor has the accused/appellant claimed ownership of the same. Hence, no doubt would arise as to the ownership of the cycle, which belonged to P.W.1. The prosecution relied on the evidence of P.Ws.2 and 3, who were the eye witnesses to the occurrence. Apart from that they were also criminally intimidated by the accused when they interfered.

7. In the instant case, the prosecution, apart from the direct evidence, has also placed a proper evidence for the arrest of the accused and the confessional statement given by the accused. Pursuant to the confessional statement, M.O.1 knife, which the accused/appellant held at the time of occurrence and M.O.2, cycle subject matter of robbery, were recovered from the accused in the presence of the witnesses under mahazar. These facts were clearly spoken to by P.W.4. As rightly pointed out by the learned Government Advocate, this strong piece of evidence would prove the nexus between the accused and the crime. Under the stated circumstances, this court is unable to accept any one of the contentions put forth by the appellant's side. When the complaint was given, P.W.1 has stated therein that a cycle was stolen, but at the time of evidence P.W.1 has stated that along with cycle, a milk can was also taken away. It is true that the can was not recovered. This part of the evidence of P.W.1 would not affect the case in any way, since the ownership of P.W.1 as to the cycle is not a disputed fact and the same has also been proved clearly. Pursuant to the confessional statement by the accused, M.O.2, cycle was recovered, which would clearly show the nexus between the accused and the crime. M.O.1, knife was not identified by the witnesses before the Court cannot in any way affect the case, because the fact that the accused threatened the witnesses with M.O.1, knife at the time of occurrence has been proved by proper evidence and the knife has also been recovered from the accused pursuant to the confessional statement, which fact is also proved by an independent witness. Apart from that though it is urged by the learned counsel for the appellant that a case was foisted against the accused at the instance of P.W.1 due to prior enmity, no material was placed before the Court to accept the said contention. Hence, all the above contentions put forth by the appellant's side have got to be discountenanced. Hence, this court is of the considered view that the lower court was perfectly correct in coming to a conclusion that the accused has committed robbery and convicting the accused under Sections 397 and 506(ii) I.P.C. Coming to the question of sentence, the lower court has given minimum sentence of seven years under Section 397 I.P.C., which has got to be affirmed. Insofar as Section 507(ii) I.P.C. is concerned, the lower court has given one year R.I., which has also got to be confirmed.

8. This criminal appeal fails and the same is dismissed confirming the conviction and sentence imposed by the lower court.

Index : Yes
Internet : Yes
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To
1. The Addl. District and Sessions Judge,
(Fast Track Court No.1), Coimbatore

2. The Addl. District and Sessions Judge,
(Fast Track Court No.1), Coimbatore
through The Principal District and Sessions Judge,
Coimbatore
3. The Superintendent, Central Prison, coimbatore
4. The Public Prosecutor, High Court, Chennai
5. The Dy. Inspector General of Police, Chennai-4
6. Mr. V.Jaya Prakash Narayan, Govt. Advocate(crl.side)
High Court, Chennai
7. The Inspector of Police(Crime)
P-6, Peelamedu Police Station, Coimbatore